BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2017-305-E

IN RE: Request of South Carolina Office of Regulatory Staff for Rate Relief to SCE&G Rates Pursuant to S.C. Code Ann. § 58-27-920	**SCE&G'S BRIEF IN OPPOSITION TO INTERVENOR SCEUC'S MOTION FOR PENDENTE LITE RELIEF**

South Carolina Electric & Gas Company ("SCE&G" or the "Company"), by and through the undersigned counsel and pursuant to 10 S.C. Code Ann. Regs. 103-829, hereby submits this Brief in Opposition to the Motion for pendente lite relief (the "Motion") filed by Intervenor South Carolina Energy Users Committee (the "SCEUC") on or about April 6, 2018. As set forth herein, the SCEUC's Motion seeks temporary injunctive relief that the Public Service Commission of South Carolina (the "Commission") does not have the authority to grant, and to which the SCEUC is not entitled at law. Moreover, even if such relief is granted, it must be accompanied by a bond or other undertaking from the SCEUC, pledging that its members will indemnify SCE&G for any losses associated with the issuance of the requested order. With or without a bond, if this relief is granted, SCEUC and its members will be liable for any losses that SCE&G's sustains as a result of the entry of the requested order.

FACTUAL & PROCEDURAL BACKGROUND

The Office of Regulatory Staff ("ORS") initiated this request for rate relief (the "Request") to challenge the revised rates that the Commission authorized SCE&G to charge in ***nine*** final orders, from which no appeals were taken. The Commission previously determined –

with ORS's concurrence – that these rates were statutorily authorized and necessary to cover SCE&G's prudent investment of approximately $3.8 billion[1] for the construction of two new nuclear power generation units at the V.C. Summer Nuclear Site.

After ORS initiated this Request on September 27, 2017, SCE&G promptly moved to dismiss ORS's Request for failure to state a claim, but the Commission denied that motion, finding that "the facts viewed in the light most favorable to ORS" may entitle it to relief on some theory. (*See* Order No. 2017-769 at 1.) However, it also ordered ORS to "carry out a thorough inspection, audit, and examination of SCE&G's revenue requirements to assist this Commission in determining whether the Company's present schedule of rates is fair and reasonable." (*Id*.) On January 31, 2018 – more than a month later – the Commission determined that ORS had not yet completed a thorough inspection, audit, and examination of SCE&G's revenue requirements. (*See* Order No. 2018-81 at 1-2.) "Given the magnitude of the issues in this Docket and their effects on the State of South Carolina," the Commission ordered ORS to "complete its performance of what this Commission requested – that is, a thorough audit, inspection and examination of the company's books." (*Id*. at 2.) These efforts remain on-going and uncompleted and by letter dated March 2, 2018, ORS stated that the work would be completed "no earlier than the beginning June of 2018."

Then, on April 6, 2018, the SCEUC filed the instant Motion, asking for "pendente lite relief reducing rates for all of SCE&G's customer classes by thirteen (13) percent pending the

[1] An additional $1.3 billion in investment made since the last revised rates order was issued in 2016 remains to be considered. The $3.8 billion figure also includes approximately $310 million in investments in transmission upgrades that will be placed in service despite the abandonment of the project.

final decision by the Commission in the within docket." (Mot. at 1.) For the reasons stated below, this motion must be denied.

STANDARD OF REVIEW

The SCEUC seeks "pendente lite relief," which is more commonly known by another name: A preliminary injunction.[2] *See Darlington Oil Co. v. Pee Dee Oil & Ice Co.*, 62 S.C. 196, 40 S.E. 169, 177 (1901) (noting that a preliminary injunction is sometimes called an "injunction pendente lite"). South Carolina courts have long-recognized that "[a]n injunction is a drastic remedy" that should only be granted in rare circumstances. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004).

"The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011). "An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation." *Id.* Such relief should only be granted if the applicant establishes that it: (1) "will suffer immediate, irreparable harm without the injunction;" (2) "has a likelihood of success on the merits;" and (3) "has no adequate remedy at law." *Id.* In evaluating whether the moving party is entitled to a preliminary injunction, "the court must examine the merits of the underlying case only to the extent necessary to determine whether the plaintiff has made a sufficient prima facie showing of entitlement to relief." *Id* at 367, 709 S.E.2d at 642.

---

[2] South Carolina courts use the terms "preliminary injunction" and "temporary injunction" interchangeably. *See, e.g., Allegro, Inc. v. Scully*, 400 S.C. 33, 45-46, 733 S.E.2d 114, 121 (Ct. App. 2012) (using the two terms interchangeably)

ARGUMENT

The SCEUC's Motion should be denied for three primary reasons. First, as a body with statutorily-limited limited powers, the Commission does not have the power to grant injunctions. Second, granting the SCEUC's Motion would undermine the very reason injunctive relief exists by upending the status quo while this action is pending. Third, the SCEUC has not made – and cannot make – a prima facie showing that ORS is likely to succeed on the merits of its Request. Additionally, even if the Commission finds that the SCEUC is entitled to temporary injunctive relief, it must require the SCEUC to post a bond or other undertaking that is sufficient to indemnify SCE&G for any losses associated with the issuance of temporary injunctive relief.

I. THE COMMISSION DOES NOT HAVE THE POWER OR AUTHORITY TO GRANT THE SCEUC'S MOTION.

This Commission is a statutory creation and "its authority is limited to that granted by the legislature." *Nucor Steel, a Div. of Nucor Corp. v. S.C. Pub. Serv. Comm'n*, 310 S.C. 539, 543, 426 S.E.2d 319, 321-22 (1992). Despite this fact, the SCEUC has failed to identify any statute granting the Commission the authority to issue temporary injunctions in proceedings like this one, or to reduce a utility's rates without any factual basis for doing so. To the contrary, the statute pursuant to which this action was brought only permits the Commission to change rates "after a preliminary investigation by the Office of Regulatory Staff and upon such evidence as the commission deems sufficient." S.C. Code Ann. § 58-27-920. Moreover, § 58-27-930 provides for the ***suspension*** of new rates pending a hearing on a challenge to the Commission's rate order, but does not permit the Commission to enforce the new rates before such a hearing has been held, or before such an order has even been entered. *See* S.C. Code Ann. § 58-27-930.

Simply stated, there is no statutory authority pursuant to which the relief that the SCEUC seeks can be granted. Therefore the Motion must be denied.

II. GRANTING THE SCEUC'S MOTION WOULD UNDERMINE THE VERY REASON COURTS GRANT TEMPORARY INJUNCTIVE RELIEF BY UPENDING THE STATUS QUO.

The SCEUC's Motion should be denied before even reaching its merits because the SCEUC's request – for a 13% reduction in SCE&G's current rates pending the resolution of this case – undermines the exclusive purpose of temporary injunctive relief. As the South Carolina Supreme Court has recognized, "***[t]he sole purpose of a temporary injunction is to preserve the status quo*** and thus avoid possible irreparable injury to a party pending litigation." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001) (emphasis added); *see also Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) ("The purpose of a preliminary injunction is to preserve the status quo[.]"). The term "status quo" is defined as "[t]he situation that currently exists." *Status Quo*, BLACK'S LAW DICTIONARY (10th ed. 2014). Accordingly, a temporary injunction should only be issued if it is necessary to maintain the relationship between the parties as it exists at the time of filing. The SCEUC's Motion – which is notably devoid of any reference to the *status quo* – asks the Commission to upend, rather than to preserve, the situation that currently exists between the parties.[3] Indeed, the SCEUC unabashedly asks this Commission to "reduc[e] rates for all of SCE&G's customer classes by thirteen (13) percent pending the final decision by the Commission[.]" (Mot. at 1.) The SCEUC

[3] South Carolina courts have previously refused to grant temporary injunctive relief under similar circumstances. *See, e.g.*, *Consol. Tires, Inc. v. Hamlett*, No. 2011-UP-308, 2011 WL 11734681, at *1 (S.C. Ct. App. June 17, 2001) (unpublished) (finding that the circuit court abused its discretion by granting a temporary injunction because "[t]he temporary injunction was not necessary to preserve the status quo," and because, "in fact, the injunction would do just the opposite").

is asking for affirmative relief that would fundamentally change the status quo before this action is resolved, and that is something that the law simply does not allow.

III. THE SCEUC HAS NOT MADE A PRIMA FACIE SHOWING THAT ORS IS LIKELY TO SUCCEED ON THE MERITS OF ITS CLAIM.

Temporary injunctive relief can only be granted when the movant shows a likelihood of success on the merits of the underlying claim. *See Compton*, 392 S.C. at 366, 709 S.E.2d at 642. In this case, the underlying claim is ORS's request to reduce SCE&G's rates pursuant to S.C. Code Ann. § 58-27-920. As an initial matter, the SCEUC appears to contend that the Commission's denial of SCE&G's Motion to Dismiss necessarily means that there is a likelihood that ORS will succeed on its § 58-27-920 claim. (*See* Mot. at 4.) That motion to dismiss, however, was judged by a different – and far lower – standard than the Commission must apply here. At the motion to dismiss stage, the Commission was required to construe ORS's allegations in the light most favorable to it, and to deny SCE&G's motion "if the 'facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.'" *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009) (quoting *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 499 (Ct. App. 2001)). By contrast, here, the SCEUC is not entitled to have its allegations – or even those of ORS – viewed in the light most favorable to it, or to have reasonable inferences made in its favor.

SCE&G has previously presented and briefed a number of reasons why ORS's claim is not likely to succeed on its merits, and indeed, why ORS's claim should have been dismissed entirely. All of those arguments, which can be found in SCE&G's briefs on its motions to dismiss, are incorporated by reference herein. But the two primary reasons that the SCEUC has not shown (and cannot show) a likelihood of success on the merits are because: (1) there is no basis on which the Commission could determine that the proposed rate reductions are just and reasonable; and (2) the Commission must assume that the BLRA – pursuant to which SCE&G's rates were enacted – is constitutional, thus the SCEUC's attempt to justify its request on the asserted invalidity of the BLRA or the orders issued under it must fail.

A. There Is No Basis on Which the Commission Can Currently Determine That the Proposed Rate Reductions Are Just and Reasonable.

"An injunction is a drastic remedy." *Scratch Golf Co.*, 361 S.C. at 121, 603 S.E.2d at 907. That is why injunctive relief – and temporary injunctive relief, in particular – is granted only in rare cases. The two cases that the SCEUC cites to support its claim for injunctive relief are distinguishable because clear law and largely undisputed facts established that the moving party in each case had a strong likelihood of success on the merits. *See Columbia Broadcasting Sys., Inc. v. Custom Recording Co.*, 258 S.C. 465, 477, 189 S.E.2d 305, 311 (1972) (finding that the circuit court erred in denying a temporary injunction because "[t]he facts before the lower court are in large measure undisputed" and because "[w]hen one recognizes the legal proposition that 'disklegging' is wrongful it becomes clear that a temporary injunction should have been granted"); *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 167 S.E.2d 313 (1969) (granting a temporary injunction with respect to an easement because the execution of that easement was not disputed and because "[c]ourts which have construed similar [ ] easements have held that they are unambiguous"). By contrast, this case involves novel legal issues and numerous factual disputes.

By law, ORS is ***required*** to support its § 58-27-920 request with evidence and, before granting such a request, the Commission is ***required*** to determine that the proposed rates are fair and reasonable. *See* S.C. Code Ann. § 58-27-920. Notably, the SCEUC's Motion says nothing about the fairness or reasonableness of the proposed rate reduction. In fact, the SCEUC makes no attempt to show that the rates proposed are fair and reasonable. Moreover, the evidence before the Commission shows that the proposed rates would be ***un***fair and ***un***reasonable. As Jimmy Addison – SCE&G's CEO – states in his affidavit:

> It is my opinion, based on my knowledge of the investment community and to a high degree of certainty, that granting the relief requested by ORS could endanger SCE&G's access to the capital it needs to invest in its utility system to continue to serve its customers in a safe and reliable manner.
>
> The rates that will result from granting the relief sought in the Request would not be just and reasonable or fair and reasonable as I understand those terms because they would not support the financial integrity of the utility nor would it allow the utility reasonable access to the capital it needs to operate its system and serve its customers on reasonable terms.

(Sept. 28, 2017 Addison Aff., at 2.)

The SCEUC appears to suggest that the reduced rates it seeks are fair and reasonable based on two "new" documents: (1) an unsigned memorandum in the form of a "expert" opinion of Julio E. ("Rick") Mendoza, Jr. (the "Mendoza Report"); and (2) a set of unsigned presentation slides prepared by the BatesWhite Economic Consulting group (the "BatesWhite Report"). Significantly, neither of these two documents is verified, and neither is potentially admissible in evidence. Thus, they cannot be relied on in considering the Motion. For that reason, both documents should be stricken from the record. Additionally, neither of them represents reliable, admissible, or sufficient evidence to support an order granting the SCEUC temporary injunctive relief.

The SCEUC portrays the Mendoza Report as offering the "expert opinion" of "bankruptcy legal counsel." (Mot. at 2.) But the report in no way discusses what could constitute fair rates for SCE&G and so it in no way contributes to a meaningful evaluation of the merits of SCEUC's Motion or the Request. Furthermore, the Mendoza Report has not been subjected to – and would never survive – the rigorous standard that it would have to satisfy to be considered reliable and admissible expert opinion. *See State v. White*, 382 S.C. 265, 270, 676 S.E.2d 684, 686 (2009) ("All expert testimony must satisfy the Rule 702 criteria, and that includes the trial court's gatekeeping function in ensuring the proposed expert testimony meets a reliability threshold[.]"); *see also* S.C.R. Evid. 702-703. The Mendoza Report merely offers one attorney's opinion "that SCE&G would probably not file for bankruptcy as a result of the elimination of the eighteen (18) percent charge." (*Id*.) Mr. Mendoza himself even acknowledges that "numerous variables may affect the decision by the Companies of whether or not to file a bankruptcy," and concedes that he "does not have complete information on all matters relating to the Companies." (Mot., Ex. 1 at 1.) In other words, his assessment that "there is only a 35% likelihood of a bankruptcy filing" amounts to little more than rank speculation. (*Id*.) Significantly, Mr. Mendoza's public statements as reported in The State newspaper cast doubt upon his report because he admitted that "he did not use a mathematical formula to arrive at [35%]," but that he was simply "looking for a way to convey the idea that 'it can't be eliminated as a real possibility' but 'it was not really likely.'"[4]

The only other piece of "evidence" that the SCEUC has proffered to support its Motion is the BatesWhite Report. This report – like the Mendoza Report – is not accompanied by any affidavit or other verification. It has not been subjected to, and could not survive, the rigorous level of scrutiny that expert testimony and evidence must satisfy to be reliable or admissible, much less sufficient to support on order granting the SCEUC temporary injunctive relief. The

[4] *See* Cindi Ross Scoppe, *What Else We Learned From That SCE&G Bankruptcy Report*, The State (Jan. 28, 2018), http://www. thestate.com/opinion/opn-columns-blogs/cindi-ross-scoppe/article196576364.html.

BatesWhite Report also acknowledges its own shortcomings, stating that it does ***not*** "[a]ddress legal or constitutional issues." This is a plain admission that the drafters of the report are either unfamiliar with or unconcerned about the standards that determine what constitutes just, fair, and reasonable rates under the Takings Clause of the United States and South Carolina Constitutions. (Mot., Ex. 2 at 7.) Additionally, and perhaps most significantly, the report acknowledges that it only "relies on publicly available information," and "necessarily does not consider the range of confidential information available in a full rate-setting proceeding." (*Id.*) In short, the BatesWhite report admits that its authors choose not to consider the legal standards that apply in setting just, fair, and reasonable rates, and that they lacked the factual information required to do so. These limitations show that, for purposes of evaluating the rates proposed in the Motion, the BatesWhite Report it is neither reliable nor probative evidence. It cannot be used to demonstrate that the SCEUC's requested rate reduction meets the constitutional mandated standard of being fair, just, and reasonable. The SCEUC has not provided the Commission with any factual basis to conclude that ORS is likely to succeed on the merits of the underlying Request by showing that the requested rates in fact meet that standard. The reports themselves demonstrate that they are inadequate to assist the SCEUC in doing so.

In the end, both the Mendoza Report and the BatesWhite report are irrelevant because both fail to address the standard by which this Commission is required to establish rates. The standard is very clear: "Every rate made, demanded or received by any electrical utility . . . shall be just and reasonable." S.C. Code Ann. § 58-27-810). This standard admits no exception. It ensures that rates established by the Commission do not violate the prohibition against the confiscation of private property for public use contained in the Takings Clause of the Fifth

Amendment to the United States Constitution and the analogous takings clause found in Article I, § 13(A) of the South Carolina Constitution.

The Takings Clause mandates that "[n]o person shall be . . . deprived of . . . property, without due process of law, ***nor shall private property be taken for public use, without just compensation***." U.S. Const. amend. V (emphasis added). "If the rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308 (1989); *accord, Covington & L. Tpk. Rd. Co. v. Sandford*, 164 U.S. 578, 593 (1896). To meet the Takings Clause standard, rates must be shown to protect investors' "legitimate concern with the financial integrity of the company whose rates are being regulated." *Fed. Power Comm'n v. Hope Nat. Gas Co*., 320 U.S. 591, 603 (1944). As the U.S. Supreme Court has stated:

> From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Id. (citations omitted). This principle is often supplemented with language from an earlier case, *Bluefield*, which held:

> The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n of W. Va., 262 U.S. 679, 692–93 (1923) (citations omitted).

Together, the *Hope* and *Bluefield* cases provide "the basic principles of utility rate regulation" in South Carolina. *S. Bell Tel. & Tel. Co. v. Pub. Serv. Comm'n*, 270 S.C. 590, 595, 244 S.E.2d 278, 281 (1978), *holding modified by Parker v. S.C. Pub. Serv. Comm'n*, 280 S.C. 310, 313 S.E.2d 290 (1984); *Patton v. S.C. Pub. Serv. Comm'n*, 280 S.C. 288, 291, 312 S.E.2d 257, 259 (1984). Indeed, multiple orders issued by this Commission reference *Hope* and *Bluefield* as controlling precedents in South Carolina.[5] The court applied these principles in *Daufuskie Island Util. Co., Inc. v. S.C. Office of Regulatory Staff*, holding that it was reversible error for the Commission not to have accepted as an adjustment to test period data a belatedly discovered bill of $65,856 for property taxes, because failing to set rates sufficient to recover that amount could jeopardize the financial viability of the utility. 420 S.C. 305, 803 S.E.2d 280, 286-287 (2017).

The Mendoza Report, for what it is worth, purports only to determine that the risk of bankruptcy from granting the ORS's request is "only" 35%. Similarly, the BatesWhite Report purports only to show that SCE&G could absorb a temporary 13% rate reduction without *immediate* insolvency. At the appropriate time, SCE&G will reply to these matters. Nevertheless, the SCEUC's position – that rates are just, fair, reasonable, and compensatory so long as bankruptcy or insolvency is not the assured result of imposing them – is absurd and contravenes the long-established law of the United States and the State of South Carolina.

In fact, the evidence on which the SCEUC relies affirmatively shows that its rate request is unlawful. That evidence, if believed, would affirmatively show that the SCEUC's requested

[5] *See, e.g.*, Order No. 2016-871, Docket No. 2016-227-E; Order No. 2012-951, Docket No. 2012-951 (Dec. 20, 2012); Order No. 2010-471, Docket No. 2009-489-E (July 15, 2010); Order No. 2005-2, Docket No. 2004-178-E (Jan. 6, 2005).

rates will lead SCE&G to the brink of the total destruction of its creditworthiness and its investors to the brink of the total loss of their investment. Such rates cannot "be reasonably sufficient to assure confidence in the financial soundness of the utility," as the law requires. *Bluefield Waterworks & Imp. Co.,* 262 U.S. at 692–93. Nor do they provide "enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock" *Hope Nat. Gas Co*., 320 U.S. at 603. For this reason alone, the SCEUC's Motion must be denied.

B. The Commission Must Assume That the BLRA Is Constitutional, Thus Rendering the Rates Imposed Pursuant to It Constitutional.

ORS's Request in this matter – and, accordingly, the SCEUC's Motion – requires the Commission to reverse nine final and unappealable orders issued under § 58-33-280. The Motion, therefore, is necessarily based on the SCEUC's assertion that the BLRA is unconstitutional, thus rendering the rate and prudency decisions made thereunder invalid. (*See* Mot. at 5 (citing the Attorney General's opinion that the BLRA "is of questionable constitutionality").) Yet, as courts have long-held, administrative agencies, like the Commission, do not have the power to adjudicate the constitutionality of laws and statutes. *See Beaufort Cty. Bd. of Educ. v. Lighthouse Charter Sch. Comm.*, 335 S.C. 230, 241, 516 S.E.2d 655, 660–61 (1999) ("An administrative agency must follow the law as written until its constitutionality is judicially determined; an agency has no authority to pass on the constitutionality of a statute."); *see also Greene v. McElroy*, 360 U.S. 474, 507 (1959) (stating that agency administrators are "not endowed with the authority to decide" constitutional questions); *Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 153 (1944) ("Certainly no power to adjudicate constitutional issues is conferred on the Administrator."); *Port Royal Min. Co. v. Hagood*, 30 S.C. 519, 9 S.E. 686, 688

(1889) ("It is not the province of the board of agriculture to determine the constitutionality of laws defining their own powers."). The South Carolina Supreme Court has held that administrative agencies cannot rule on the constitutionality of statutes because giving them such power would violate the separation of powers. *See, e.g., Ward v. State*, 343 S.C. 14, 19-20, 538 S.E.2d 245, 247-48 (2000) ("Allowing ALJs to rule on the constitutionality of a statute would violate the separation of powers doctrine."). To date, no court has determined that the BLRA is unenforceable or unconstitutional.

Because the Commission does not have the power to determine the BLRA's constitutionality, it must presume that the BLRA is constitutional. *Horry Cty. Sch. Dist. v. Horry Cty.*, 346 S.C. 621, 631, 552 S.E.2d 737, 742 (2001). The conclusion that necessarily follows from this fact is that ORS's challenge – which is premised on the unconstitutionality of the BLRA – is not likely to succeed on its merits, and further, that the SCEUC's Motion must be denied. Furthermore, as SCE&G has argued in prior motions, even if the BLRA was determined that to be unconstitutional, which it is not, a court of competent jurisdiction would have to determine whether such a ruling should be applied retroactively. This is not an issue that the Commission is empowered to decide.

IV. THE SCEUC CANNOT RECEIVE TEMPORARY INJUNCTIVE RELIEF UNLESS IT POSTS AN ADEQUATE BOND.

Even if the Commission finds that the SCEUC can satisfy all of the elements required for temporary injunctive relief, it cannot grant the SCEUC's Motion without requiring the SCEUC to post a bond or other security that will indemnity SCE&G for any losses associated with the requested relief. As Rule 65(c) of the South Carolina Rules of Civil Procedure states:

> Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue

> except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

S.C.R. Civ. P. 65(c). South Carolina courts routinely find that failing to require the posting of a bond to accompany an injunction is reversible error. *See, e.g., AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50, 674 S.E.2d 505, 508 (Ct. App. 2009) ("[B]ecause Rule 65(c), SCRCP, requires the trial court to order Respondents to post a bond before issuing the temporary injunction, and no bond was ordered in this case, we remanded this case for the trial court to amend the order of injunction to require execution of a sufficient bond."). Moreover, a nominal bond is insufficient to satisfy this requirement. *See, e.g., Atwood Agency v. Black*, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007) ("The circuit court's order requiring only a nominal security bond does not satisfy Rule 65(c) because it erroneously assumes the injunction is proper instead of providing an amount sufficient to protect appellants in the event the injunction is ultimately deemed improper.").

The SCEUC has specifically requested that the Commission reduce SCE&G's rates by at least $319 million per year. (*See* Mot. at 2.) Thus, even if temporary injunctive relief were appropriate here (which it is not), the SCEUC's Motion cannot be granted unless and until the SCEUC posts a bond sufficient to cover any losses that SCE&G may incur as a result of that relief. In other words, any bond must be in an amount no less than $319 million.[6] Whether or not such a bond is posted, SCE&G is not waiving and specifically reserves its right to hold SCEUC and its members liable for any damages SCE&G suffers in the form of lost revenues or

[6] A sufficient bond is particularly important in this case in light of the significant financial consequences that could result to SCE&G and SCANA if the Motion is granted.

otherwise as a result of the issuance of such the requested injunction if that injunction is later determined to have to have been improperly issued.

CONCLUSION

For the reasons set forth herein, SCE&G respectfully requests that the Commission deny the SCEUC's Motion in its entirety.

Respectfully submitted,

s/Belton T. Zeigler
Belton T. Zeigler
Womble Bond Dickinson (US) LLP
1221 Main Street
Suite 1600
Columbia, SC 29201
(803) 454-7720
belton.zeigler@wbd-us.com

K. Chad Burgess, Esquire
Matthew Gissendanner, Esquire
Mail Code C222
220 Operation Way
Cayce, SC 29033-3701
Telephone: 803-217-8141
Facsimile: 803-217-7931
chad.burgess@scanna.com
matthew.gissendanner@scana.com

Mitchell Willoughby
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, SC 29202
(803) 252-3300
mwilloughby@willoughbyhoefer.com

Attorneys for South Carolina Electric & Gas Company

Cayce, South Carolina
April 16, 2018

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2017-305-E

IN RE: Request of South Carolina Office of Regulatory Staff for Rate Relief to SCE&G Rates Pursuant to S.C. Code Ann. § 58-27-920	**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one copy of the **SCE&G'S BRIEF IN OPPOSITION TO INTERVENOR SCEUC'S MOTION FOR PENDENTE LITE RELIEF** to the persons named below via electronic mail:

Alexander G. Shissias , Counsel The Shissias Law Firm, LLC 1727 Hampton Street Columbia, SC 29201 Email: alex@shissiaslawfirm.com Phone: 803-540-3090	**Camden N. Massingill** , Counsel Wyche Law Firm 801 Gervais Street, Suite B Columbia, SC 29201 Email: cmassingill@wyche.com Phone: 803-254-6542 Fax: 803-254-6544
Christopher S. McDonald , Counsel The Tiencken Law Firm, LLC 234 Seven Farms Drive Suite 114 Daniel Island, SC 29492 Email: cmcdonald@tienckenlaw.com Phone: 843-377-8415 Fax: 843-377-8419	**Damon E. Xenopoulos** , Counsel Stone Mattheis Xenopoulos & Brew, PC 1025 Thomas Jefferson Street, N.W. Eighth Floor, West Tower Washington, DC 20007 Email: DEX@smxblaw.com Phone: 202-342-0800 Fax: 202-342-0807
Derrick Price Williamson , Counsel Spilman Thomas & Battle, PLLC 1100 Bent Creek Blvd., Suite 101 Mechanicsburg, PA 17050 Email: dwilliamson@spilmanlaw.com Phone: 717-795-2740 Fax: 717-795-2743	**Dino Teppara** , Counsel Dino Teppara 104 Egret Court Lexington, SC 29072 Email: Dino.Teppara@gmail.com
Elizabeth Jones , Counsel Southern Environmental Law Center 463 King Street, Suite B Charleston, SC 29403	**Frank Knapp, Jr.** Frank Knapp, Jr. 118 East Selwood Lane Columbia, SC 29212

Email: ejones@selcsc.org Phone: 843-720-5270	Email: fknapp@knappagency.com Phone: 803-765-2210
Frank R. Ellerbe, III , Counsel Sowell Gray Robinson Stepp Laffitte, LLC Post Office Box 11449 Columbia, SC 29211 Email: fellerbe@sowellgray.com Phone: 803-227-1112 Fax: 803-744-1556	**J. Blanding Holman, IV** , Counsel Southern Environmental Law Center 463 King Street - Suite B Charleston, SC 29403 Email: Bholman@selcsc.org Phone: 843-720-5270 Fax: 843-414-7039
J. Emory Smith Jr. , Counsel Office of the South Carolina Attorney General Post Office Box 11549 Columbia, SC 29211 Email: esmith@scag.gov Phone: 803-734-3680	**Jeffrey M. Nelson** , Counsel Office of Regulatory Staff 1401 Main Street, Suite 900 Columbia, SC 29201 Email: jnelson@regstaff.sc.gov Phone: 803-737-0800 Fax: 803-737-0895
Jenny R. Pittman , Counsel Office of Regulatory Staff 1401 Main Street, Suite 900 Columbia, SC 29201 Email: jpittman@regstaff.sc.gov Phone: 803-737-0889/0794 Fax: 803-737-0895	**John B. Coffman** , Counsel John B. Coffman, LLC 871 Tuxedo Blvd St. Louis, MO 63119 Email: john@johncoffman.net
John H. Tiencken, Jr. , Counsel Tiencken Law Firm, LLC The Tiencken Law Firm, LLC 234 Seven Farms Drive, Suite 114 Charleston, SC 29492 Email: jtiencken@tienckenlaw.com Phone: 843-377-8415 Fax: 843-377-8419	**Lara B. Brandfass** , Counsel Spilman Thomas & Battle, PLLC 300 Kanawha Blvd., East Charleston, SC 53501 Email: lbrandfass@spilmanlaw.com
Lynn Teague Lynn Teague 3728 Wilmot Avenue Columbia, SC 29205 Email: TeagueLynn@gmail.com Phone: 803-556-9802	**Matthew T. Richardson** , Counsel WycheLaw Firm 801 Gervais Street, Suite B Columbia, SC 29201 Email: mrichardson@wyche.com Phone: 803-254-6542 Fax: 803-254-6544
Michael N. Couick , Counsel The Electric Cooperatives of South Carolina, Incorporated 808 Knox Abbott Drive Cayce, SC 29033 Email: mike.couick@ecsc.org Phone: 803-739-3034 Fax: 803-796-6064	**Richard L. Whitt** , Counsel Austin & Rogers, P.A. 508 Hampton Street, Suite 300 Columbia, SC 29201 Email: rlwhitt@austinrogerspa.com Phone: 803-251-7442 Fax: 803-252-3679
Robert D. Cook , Counsel Office of South Carolina Attorney General	**Robert E Tyson Jr** , Counsel Sowell Gray Robinson Stepp & Laffitte, LLC

Post Office Box 11549 Columbia, SC 29211 Email: bcook@scag.gov Phone: 803-734-3680	Post Office 11449 Columbia, SC 29211 Email: rtyson@sowellgray.com Phone: 803-231-7838 Fax: 803-231-7888
Robert Guild , Counsel Robert Guild - Attorney at Law 314 Pall Mall Street Columbia, SC 29201 Email: bguild@mindspring.com Phone: 803-252-1419 Fax: 803-252-1419	**Scott Elliott** , Counsel Elliott & Elliott, P.A. 1508 Lady Street Columbia, SC 29201 Email: selliott@elliottlaw.us Phone: 803-771-0555 Fax: 803-771-8010
Shannon Bowyer Hudson , Counsel Office of Regulatory Staff 1401 Main Street, Suite 900 Columbia, SC 29201 Email: shudson@regstaff.sc.gov Phone: 803-737-0800 Fax: 803-737-0895	**Stephanie U. (Roberts) Eaton** , Counsel Spilman Thomas & Battle, PLLC 110 Oakwood Drive, Suite 500 Winston-Salem, NC 27103 Email: sroberts@spilmanlaw.com Phone: 336-631-1062 Fax: 336-725-4476
Susan B. Berkowitz , Counsel SC Appleseed Legal Justice Center Post Office Box 7187 Columbia, SC 29202 Email: sberk@scjustice.org Phone: (803) 779-1113	**Timothy F. Rogers** , Counsel Austin and Rogers, P.A. Post Office Box 11716 Columbia, SC 29201 Email: tfrogers@austinrogerspa.com Phone: 803-712-9900 Fax: 803-712-9901
Wallace K. Lightsey , Counsel Wyche Law Firm 801 Gervais Street, Suite B Columbia, SC Email: wlightsey@wyche.com Phone: 803-254-6512 Fax: 803-254-6544	**William C. Cleveland IV** , Counsel Southern Environmental Law Center 463 King St., Suite B Charleston, SC 29403 Email: wcleveland@selcsc.org Phone: 843-720-5270 Fax: 843-520-5240

s/Belton T. Zeigler

Cayce, South Carolina
April 16, 2018